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10 SOUTHERN CALIFORNIA WATER COMPANY

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13 **BEFORE THE**  
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15 **STATE WATER RESOURCES CONTROL BOARD**  
16  
17 **STATE OF CALIFORNIA**

18 In re Petition of Southern California Water )  
19 Company to Revise the Declaration of Fully ) **MOTION TO EXCLUDE TESTIMONY**  
20 Appropriated Stream Systems Regarding the ) **OF STEPHEN D. REYNOLDS**  
21 American River, Sacramento County )  
22 )

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25 Petitioner, Southern California Water Company (“Petitioner”), objects to and hereby  
26 moves to exclude the testimony of Stephen D. Reynolds, as its basis on confidential information  
27 allows Petitioner no opportunity for rebuttal of evidence presented against it in an adjudicative  
28 proceeding.

Stephen D. Reynolds, on behalf of the California Department of Fish and Game, has  
submitted written testimony to the State Water Resources Control Board (“Board”) stating that  
the Board should not revise the Declaration of Fully Appropriated Streams to accept any  
applications to appropriate treated groundwater discharged into the American River.

Mr. Reynolds’ testimony is based primarily on his review of confidential data from  
approximately 200 well logs in the vicinity of the Aerojet site. (Testimony of Stephen D.  
Reynolds, Footnote 2). In a later footnote buried on page 10 of his testimony, Mr. Reynolds’  
admits that: “The well log data is not attached to this testimony because pursuant to Water Code  
section 13752, that information is confidential except under limited circumstances. Government

agencies such as DFG and the Water Board can access the well logs for studies. The logs are available to private individuals, such as the Petitioner, with prior written authorization from the well owner.” (Testimony of Stephen D. Reynolds, Footnote 6).

There is no way to tell what percentage of Mr. Reynolds’ testimony is based on his review of the well logs in question and what percentage is based on the other sources of information. However, the testimony indicates that this confidential data played an important role in the testimony’s description of the “hydrogeologic setting” of the American River and surrounding area. If the basis for such a foundational element of this testimony is confidential information, then it is effectively impossible to separate the confidential information from any other part of the testimony.

Both California statute and case law state that in an administrative hearing each party shall have the right to rebut any evidence against him or her and that in order to allow this opportunity for rebuttal that the party be appraised of this evidence.

Title 23 of the California Administrative Code provides that: “Adjudicative proceedings will be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513.” (Cal. Code Regs., tit. 23 § 648.5.1.) California Government Code § 1513(b) provides that each party to an administrative hearing shall have the right “to rebut evidence against him or her.” The Supreme Court of California has ruled that “a hearing requires that the party be appraised of the evidence against him in order that he may refute, test and explain it.” (*La Prade v. Department of Water and Power of City of Los Angeles*, 27 Cal.2d 47, 52 (1945).) Testimony against Petitioner based on confidential evidence does not provide an opportunity for refutation, testing or explanation, nor does it allow Petitioner or the Board any certainty that the evidence presented is what it is purported to be.

Allowing the Testimony of Stephen Reynolds, based as it is on confidential information, violates Petitioner’s rights under California law to be appraised of the evidence against it in an

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adjudicative proceeding in order to refute, test and explain it. Consequently, Mr. Reynolds'

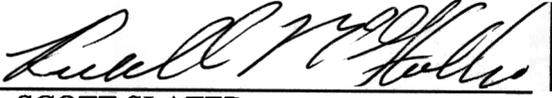
2 Testimony should be excluded.

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4 DATED: May 30, 2002

HATCH AND PARENT

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By 

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MICHAEL FIFE  
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Attorneys for Petitioner,  
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COMPANY

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**PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to the within  
3 action. My business address is HATCH AND PARENT, 21 East Carrillo, Santa Barbara, California 93101.  
4 On May 30, 2002 , I served the within document:

**MOTION TO EXCLUDE TESTIMONY OF STEPHEN D. REYNOLDS**

- 5
- 6  by transmitting via facsimile the document listed above to the fax number set forth below  
on this date before 5:00 p.m.
- 7  by placing the document listed above in a sealed envelope with postage thereon fully  
8 prepaid, in the United States mail at Santa Barbara, California, addressed as set forth  
below.
- 9  by causing delivery of the document listed above to the person at the address set forth  
10 below by Federal Express.
- 11  by personally delivering the document listed above to the person at the address set forth  
12 below.

13 See Attached List

14

15 I am readily familiar with the firm's practice of collection and processing correspondence for  
16 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with  
17 postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party  
served, service is presumed invalid if postal cancellation date or postage meter date is more than one day  
after date of deposit for mailing in affidavit.

18  (State) I declare under penalty of perjury under the laws of the State of California that  
19 the above is true and correct.

20

21 Executed on May 30, 2002, at Santa Barbara, California.

22   
23 \_\_\_\_\_  
24 Brenda Torres

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